PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number
	Q77528

	Application Number	Filed
Mail Stop AF	10/690,544	October 23, 2003
Commissioner for Patents	First Named Inventor	
P.O. Box 1450 Alexandria, VA 22313-1450	Wim HENDERICKX	
	Art Unit	Examiner
	2619	Ketan S. SONI

WASHINGTON OFFICE

23373

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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

☑ I am an attorney or agent of record.

  Registration number   39,234

/Kelly G. Hyndman 39,234/
Signature

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March 21, 2008
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	Docket No: Q77528
Wim HENDERICKX, et al.	
Application No.: 10/690,544	Group Art Unit: 2619
Confirmation No.: 6418	Examiner: Ketan S. SONI
Filed: October 23, 2003	
For: TELECOMMUNICATION ROUTER	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the

Examiner's Final Office Action dated November 28, 2007, Applicant files this Pre-Appeal Brief

Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claim Rejections Under 35 U.S.C. § 102

Claims 1-3 and 5-9 remain rejected under 35 U.S.C. § 102(e) as allegedly being

anticipated by U.S. Patent No. 7,225,271 to DiBiasio et al. ("DiBiasio"). Applicant traverses this

rejection for at least the following reasons.

In the Amendment filed on February 15, 2008, Applicant submitted arguments in

traversal of this rejection. In the Advisory Action of March 5, 2008, however, the Examiner did

not provide any response to those arguments, instead simply referring Applicant to the Office

Action of November 28, 2007.

In the Amendment filed on September 11, 2007, Applicant asserted that claim 1 was not taught by DiBiasio. The Examiner disagreed with those assertions in the Office Action of November 28, 2007; however, the Examiner did not provide reasoning sufficient to maintain the rejection.

Claim 1 requires that "each queue of said plurality of queues is controlled by a <u>queue manager</u> adapted to <u>discard packets</u> coming from said packet classifier <u>when a predetermined threshold filling level of the queue is reached</u>." This element of claim 1 contains a number of requirements untaught by DiBiasio. For example, this portion of claim 1 requires, <u>inter alia</u>, that it is the "queue manager" which is adapted to "discard packets." Furthermore, the claimed packets must be discarded "when a predetermined threshold filling level of the queue is reached."

First, the Examiner fails to show that DiBiasio teaches a "queue manager" adapted to "discard packets." In the "Response to Arguments" section of the Office Action of November 28, 2007, the Examiner asserted that "DiBiasio discloses that RSVP engine performs admission control," citing col. 11, lines 5-6 of DiBiasio. (Office Action of November 28, 2007 at 7.) The Examiner further asserted that "RSVP engine directs the classification engine to place packets in priority queue," citing col. 12, lines 6-8 of DiBiasio. (Id.) The Examiner, thus, asserted that because the RSVP engine may deny a reservation request, this aspect of DiBiasio is sufficient to teach a "queue manager" adapted to "discard packets."

The RSVP engine of DiBiasio, however, is clearly <u>not</u> a "queue manager." In fact, the Examiner clearly conceded this point in stating that "[a]s shown in Fig. 5, Queue selector 510 manages the queues Q1-Q4." (Id.) Thus, the Examiner failed to properly assert that the component of DiBiasio identified by the Examiner as corresponding to the "queue manager" of claim 1, namely the queue selector 510, discards packets in the manner required by claim 1.

With respect to the above arguments, Applicant also previously submitted that the

Examiner had not sufficiently addressed Applicant's argument as presented in the Amendment

filed on September 11, 2007. For example, Applicant clearly stated that "the RSVP engine [424]

is not a queue manager because it does not manage the queues the Examiner associates with the

queues of claim 1." As set forth above, <u>the Examiner again fails to assert that the RSVP engine

of DiBiasio manages the queues.</u>

Applicant also respectfully submits that, as was noted in the Response of February 15,

2008, "[w]here the Applicant traverses any rejection, the examiner should, if he or she repeats

the rejection, take note of the Applicant's argument and answer the substance of it." MPEP

§ 707.07(f) (emphasis added). Since the Examiner has failed to directly address this argument,

thereby delaying prosecution, Applicant respectfully submits that the finality of the Office

Action of November 28, 2007 is maintained in error. For this reason, Applicant respectfully

submits that the Examiner should either (1) allow prosecution to be re-opened and provide

Applicant with a substantive response rebutting Applicant's arguments regarding the "queue

manager" required by claim 1, or (2) withdraw the rejection in response to Applicant's

arguments.

Second, nothing in DiBiasio appears to contemplate discarding packets "when a

predetermined threshold filling level of the queue is reached." <u>DiBiasio contains no discussion

of a threshold</u>, and the Examiner has failed to assert that this requirement of claim 1 is met. At

best, DiBiasio merely suggests the possibility of the PQ becoming full, in which case packets

may be dropped. (DiBiasio at col. 12, lines 17-19.) Thus, DiBiasio only appears to suggest that

when the maximum capacity of the PQ is reached, some packets, but not necessarily all packets,

may be dropped simply due to an incapacity to handle them. Such accidental and unpredictable

dropping cannot be reasonably characterized as an affirmative act of "discarding packets," as required by claim 1.

Applicant, thus, emphasizes that DiBiasio contains no teaching of an intentional discarding of packets <u>by a queue manager,</u> and contains no teaching that packets should be <u>intentionally discarded</u> "when a <u>predetermined threshold</u> filling level of the queue is reached." Applicant, further, respectfully points out that the recitation of "a predetermined threshold filling level" in claim 1 is clearly supported in the specification, for example in elements T0-T3 of the non-limiting exemplary embodiment depicted in Fig. 1. In contrast, there appears to be no mention whatsoever of a predetermined threshold filling level in DiBiasio.

Thus, DiBiasio fails to teach each and every required element of claim 1, and therefore, fails to anticipate claim 1. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection.

Respectfully submitted,

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